

REMARKS

Claim 1 is currently pending in the subject patent application. Claim 1 has been amended to add two instances of "and." No new matter has been added by these additions. Claims 2 and 3 are newly added. No new matter has been added by these claims since support therefor may be found in Col. 8, lines 30-59, and in FIG. 3 of U.S. Patent No. 5,959,574. Applicant respectfully requests that the indicated changes be entered into the present Reissue Patent Application.

In the subject Office Action, claim 1 was rejected under 35 U.S.C. 101 because the Examiner asserted that the claimed invention is directed to non-statutory subject matter since, quoting the Manual Of Patent Examining Procedure, "... a process consisting solely of mathematical operations, i.e., converting one set of numbers into another set of numbers, does not manipulate appropriate subject matter and thus cannot constitute a statutory process. In practical terms, claims define nonstatutory processes if they: consist solely of mathematical operations without some claimed practical application (i.e., executing a "mathematical algorithm")" The Examiner concluded that claim 1 of the present application recites method steps that read on a computer algorithm for processing collected data, and that, as a result, this claim may be directed to non-statutory subject matter.

The Examiner continued that the test for a claim meeting the 35 USC 101 judicial exception is as follows: A claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it: (A) "transforms" an article or physical object to a different state or thing; or (B) otherwise produces a useful, concrete and tangible result, based on the factors discussed below. The Examiner concluded that in order to overcome the 35 USC 101 rejection, applicant is required to point out the limitations of claim 1 that meet either A or B above.

Turning now to claim 1, applicant wishes to point out that claim 1 recites: "repeatedly scanning a region containing a set consisting of one or more moving objects and generating ... sequential images or data sets of said region ... determining a plurality of tracks, at least one track for each object in said set; ...

and taking one or more of the following actions based on said optimal or near-optimal assignment of said plurality of points to said plurality of tracks: sending a warning to aircraft or a ground or sea facility, controlling air traffic, controlling anti-aircraft or anti-missile equipment, taking evasive action, working on one of said one or more objects, and surveilling one of said one or more objects." Clearly, claim 1 recites performing scanning measurements to determine the tracks of each observed object, and taking prescribed actions in response to the results obtained from a series of steps for analyzing this information, thereby producing a useful, concrete and tangible result, as required by the Examiner.

Moreover, claim 1 recites steps for transforming an article or physical object to a different state or thing. As an example, the step of "controlling anti-aircraft or anti-missile equipment," if carried out, would clearly transform one or more of said identified objects into a different state or thing.

Claims 2 and 3 have been added to positively recite a specific embodiment of tangible apparatus upon which such identified concrete and tangible results are generated.

On October 30, 2008, the Court in *In re Bilski*, __ F.3d__ (Fed. Cir. 2008) (*en banc*), explained that analysis under 35 U.S.C. 101 should consider that: 1. "the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility;" and 2. "the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity." In the present situation, all of sending a warning to aircraft or a ground or sea facility, controlling air traffic, controlling anti-aircraft or anti-missile equipment, taking evasive action, working on one of said one or more objects, and surveilling one of said one or more objects, recited in subject claims 1 and 2 hereof, do not represent insignificant extra-solution activity. Additionally, repeatedly scanning a region containing a set consisting of one or more moving objects and generating ... sequential images or data sets of said region ... determining a plurality of tracks, at least one track for each object in said set must be performed using specific machinery, as identified in the subject Specification, impose meaningful limits on the claim's scope.

Therefore, both under the standards set forth by the Examiner hereinabove, and those set forth in *In re Bilski*, applicant believes that subject claims 1-3 represent statutory subject matter under 35 U.S.C. 101.

For the reasons set forth hereinabove, applicant respectfully believes that subject claim 1, as amended, and newly added claims 2 and 3 are in condition for allowance, and such action by the Examiner at an early date is earnestly solicited.

Reexamination and reconsideration are respectfully requested.

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Respectfully submitted,

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